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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,067	11/17/2003	Gerald W. Samide	2224-00400	3301
23505	7590	03/03/2006	EXAMINER	
CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267			CECIL, TERRY K	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/715,067	SAMIDE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mr. Terry K. Cecil	1723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11-17-2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>one</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on November 5, 2003. It is noted, however, that applicant has not filed a certified copy of the Canadian application as required by 35 U.S.C. 119(b).

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the collar of claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

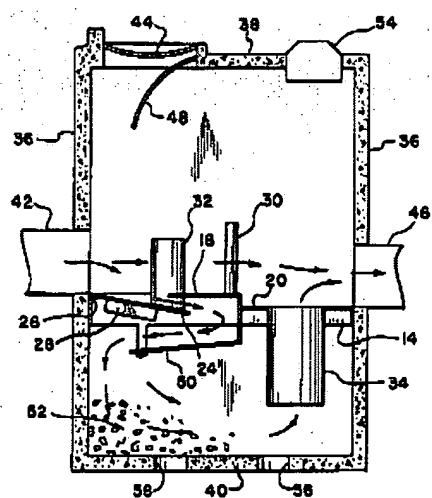
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

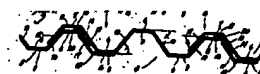
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 6, 8-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kizhnerman et al. (U.S. 6,062,767) in view of Gifford (U.S. 2,249,818). Kizhnerman



teaches a separator system having a mid-deck (e.g. 20) defining upper and lower chambers within a rectangular tank. Inlet and outlet sewer pipes (42, 46) are located adjacent the middeck and a diffuser (18+24+50) and a "flow control" orifice 22 (figure 5) [as in claims 1, 8 and 12]. Kizhnerman doesn't teach at least one wall to include a sheet piling. But such is taught by Gifford.



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Gifford teaches steel sheet piling (figure 4) [as in claims 1 and 9]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have at least some of the tank walls of Kizhnerman to be made of the steel sheet piling of Gifford, since Gifford teaches the benefit of simplified construction which is adapted to *readily form* a water-tight wall (col. 1). This would be an advantage to Kizhnerman over concrete which requires a curing period before the structure can be used.

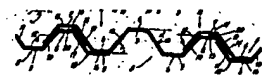
As for claims 2-4, the diffuser comprises a wall 12 defining a top and bottom opening for flow between chambers. "Vanes" (24 and 50) are connected to the wall and both extend substantially parallel with the direction of flow from the inlet orifice and are wider apart at the bottom opening.

Element 34 is a "pipe" extending from the mid deck and into the bottom chamber [as in claim 6].

5. Claims 1-2, 6, 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monteith (U.S. 5,725,760) in view of Gifford. As shown e.g. figure 1, Monteith teaches all the limitations of the aforementioned claims (except for the sheet piling) including a tank, inlet and outlet sewer pipes, a mid-deck having a "diffuser" 36 and "flow control orifice" 40 [as in claims 1-2, 6 and 12] as well as a tube having a structure allowing for extraction of the oil from the bottom chamber [as in claim 11].

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Monteith doesn't teach at least one wall to include a sheet piling. But such is taught by Gifford.

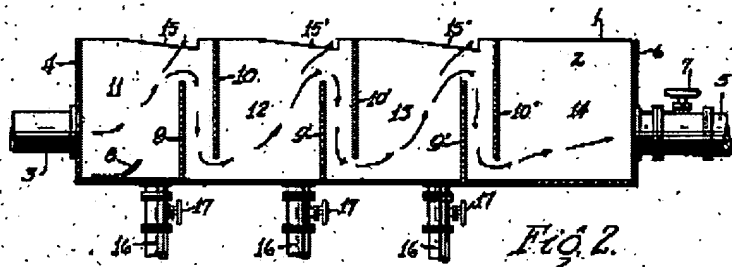


Gifford teaches steel sheet piling (figure 4) [as in claims 1 and 9]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have at least some of the tank walls of Monteith to be made of the steel sheet piling of Gifford, since Gifford teaches the benefit of simplified construction which is adapted to *readily form* a water-tight wall (col. 1). This would be an advantage to Monteith over concrete which requires a curing period before the structure can be used.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *either* Kizhnerman or Monteith in view of Gifford, as applied above, and in further view of Metzler (U.S. 1,962,830). Claim 10 has the additional limitation of the steel sheet piling being a Z-type. Such is taught by Metzler (see the figure thereof). It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the steel sheet piling of the modified Kizhnerman or the modified Monteith to be a Z-type as in Metzler, since Metzler teaches the benefit of a more efficient utilization of material that is still an interlocking design.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over *either* Kizhnerman or Monteith in view of Gifford, as applied above, and in further view of Spencer (U.S.

2,058,044). Claim 5 adds the further limitation of at least one baffle extending upwards from

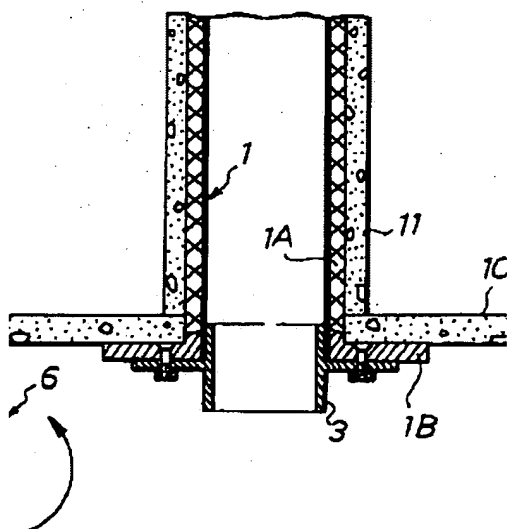


the bottom of the tank. Spencer teaches such baffles 9 as shown in figure 2. It is considered that it would have been obvious to one

ordinarily skilled in the art at the time of the invention to have the baffles of Spencer in the lower chambers in either of the modified inventions of Kizhnerman or Monteith, since Spencer teaches the benefit of enhancing the separation of oil (page 2, lines 15-27).

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over *either* Kizhnerman or Monteith in view of Gifford, as applied above, and in further view of Kamiyama et al. (U.S.

5,944,058). Claim 7 adds the limitation of a collar defining an interior diameter of the flow



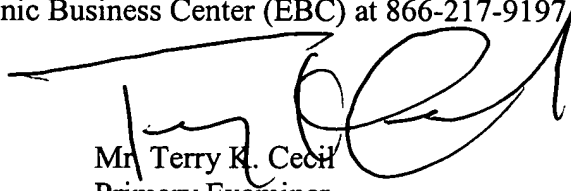
control pipe. Such a collar member 3 is taught by Kamiyama [as in claim 7]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the member 3 of Kamiyama in either invention of the modified Kizhnerman or Monteith, since Kamiyama teaches the benefit of a pipe liner. In addition the member would

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protect the pipe from erosive forces that result from the expansion of the fluid as it flows from the pipe (small area) into the upper chamber (large area).

9. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (571) 272-1138 at the Carlisle campus in Alexandria, Virginia for any inquiries concerning this communication or earlier communications from the examiner. Note that the examiner is on the increased flextime schedule but can normally be found in the office during the hours of 8:30a to 4:30p, on at least four days during the week M-F.
- Wanda Walker, the examiner's supervisor, can be reached at (571) 272-1151 if attempts to reach the examiner are unsuccessful.
- The Fax number for this art unit for official faxes is (571) 273-8300.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mr. Terry K. Cecil  
Primary Examiner  
Art Unit 1723

TKC  
February 27, 2006